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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,535	09/19/2003	Jeffrey S. Lockwood	7175-73441	4275

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EXAMINER

BOGART, MICHAEL G

ART UNIT PAPER NUMBER

3761

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/664,535

Applicant(s)

LOCKWOOD ET AL.

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 32-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1-3</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed 03 February 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Only some of the foreign documents are presently available in the file, see PAIR (see PAIR information in the conclusion of this Office action). The foreign documents that are not in the file have not been considered as indicated on form PTO-1449.

### ***Specification***

The disclosure is objected to because of the following informalities:

Update the status of any applications that this application claims priority to in the first paragraph of the specification.

Appropriate correction is required.

### ***Claim Rejections § 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

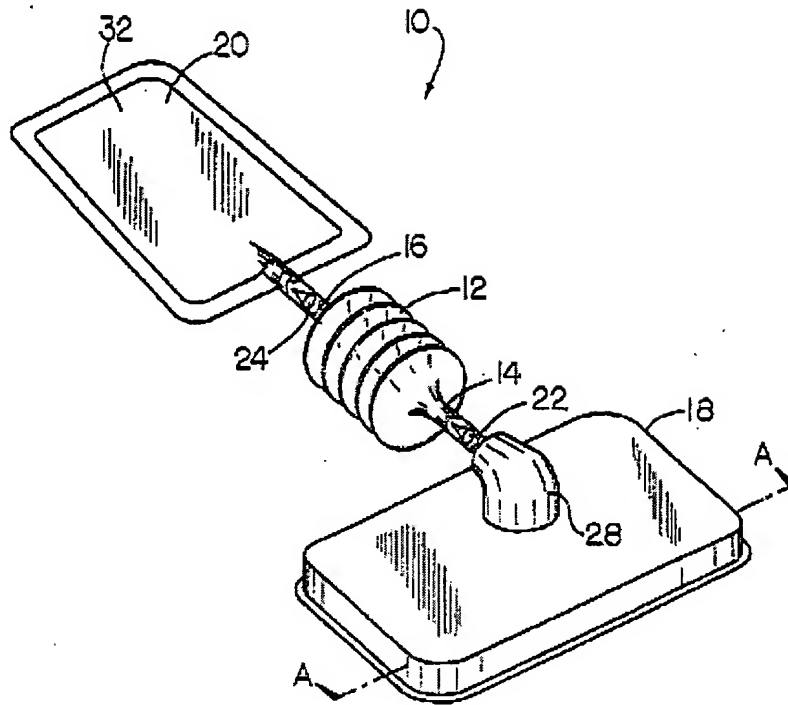
Claims 32, 36 and 37 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gross (US 5,549,584 A).

Gross teaches a method of providing suction and irrigation to an open wound surface comprising the steps of:

providing a relatively thin and flexible member (40) having a wound contacting surface with holes (46) in the surface, a port (28) capable of be attached to a vacuum source and a fluid source for irrigation, and passageways (48) connecting the holes to the port,

placing the wound contacting surface against the surface of the wound, providing a cover (18) over and sealed about the wound and the member (40) to define a space above the wound in which a vacuum is formed when the port is connected to a vacuum source (see fig. 1, below).

Regarding claims 36 and 37, Gross teaches the step of spacing member (42) from a wound surface using spacers (46).



Claims 32-34 are rejected under 35 U.S.C. § 102 (a) and (e) as being anticipated by Zamierowski (US 6,071,267 A).

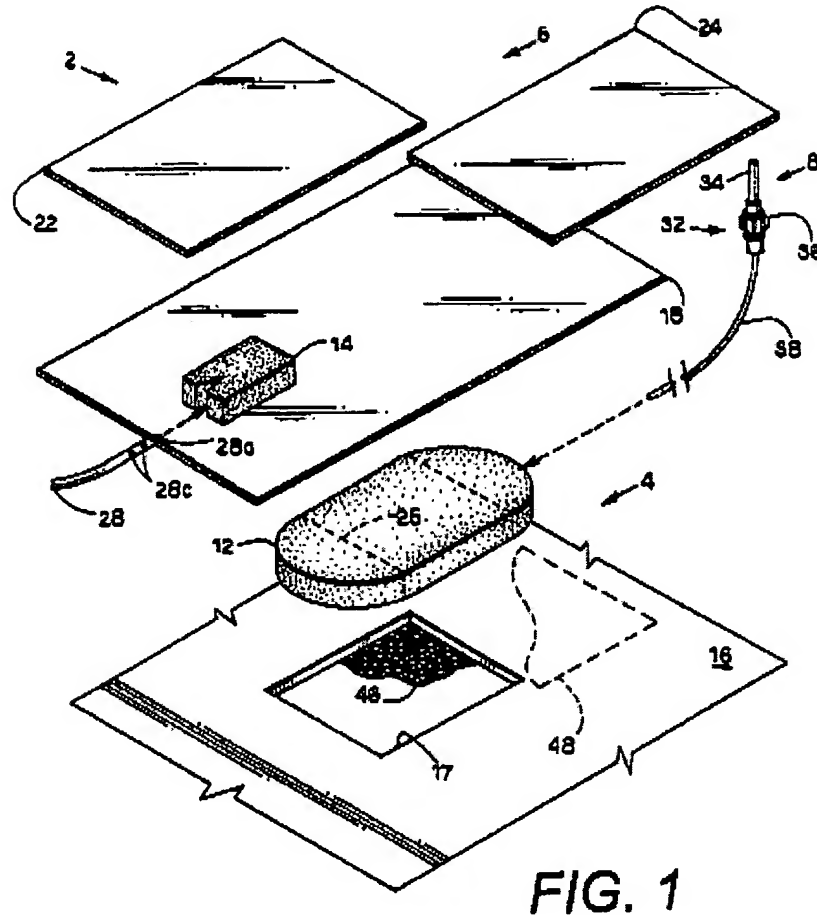
Regarding claims 32 and 34, Zamierowski teaches a method of providing suction and irrigation to an open wound surface comprising the steps of:

providing a relatively thin and flexible member (12, 18) having a wound contacting surface (12) with holes in the surface, a port (28, 38) capable of be attached to a vacuum source and a fluid source (33) for irrigation, and passageways (open cell interstices in foam) connecting the holes to the port,

placing the wound contacting surface against the surface of the wound, providing a cover (22, 24) over and sealed about the wound and the member (12, 18) to define a space above the wound in which a vacuum is formed when the port is connected to a vacuum source (see fig. 1, below).

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Regarding claim 33, see Zamierowski col. 6, lines 30-32.



**FIG. 1**

***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claim 35 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Zamierowski.

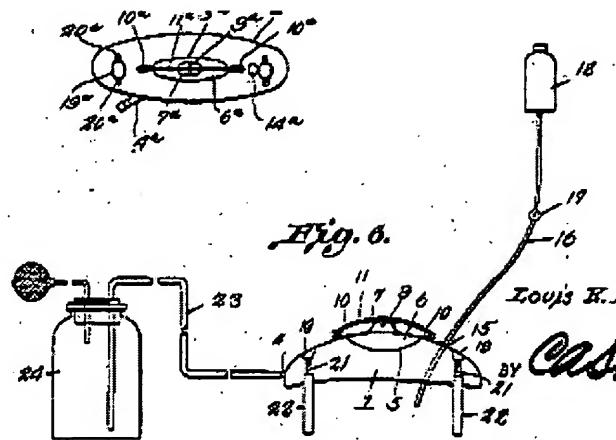
Zamierowski does not teach a plurality of irrigation ports.

Mere duplication of parts is not sufficient to patentably distinguish a claimed invention over the prior art. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Claims 38 and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gross as applied to claims 32, 36 and 37 above, and further in view of Estler (US 2,195,771).

Gross teaches the claimed invention except for the step of coupling a port to an irrigation source.

Estler teaches a surgical drainage cup comprising both a suction port (4) and an irrigation port (15)(see fig. 6).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the irrigation port and source of Estler to the suction bandage of Gross in order to provide a means of hydrating the wound.

### Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Svedman *et al.* (US 5,176,663 A); Heaton (WO 99/13793 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart  
22 February 2006

TATYANA ZOLUKAEVA  
SUPERVISOR/PRIMARY EXAMINER

